

GREGORY S. TAMKIN (State Bar No. 175009)  
CASE COLLARD (State Bar No. 245834)  
DORSEY & WHITNEY LLP  
1400 Wewatta Street, Suite 400  
Denver, CO 80202-5549  
Telephone: (303) 629-3400  
Facsimile: (303) 629-3450  
Email: tamkin.greg@dorsey.com  
Email: collard.case@dorsey.com  
*Attorneys for Defendants Ameriprise Financial, Inc.  
and Ameriprise Financial Services, Inc.*

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

XIMPLEWARE CORP.,  
Plaintiff,

v.

VERSATA SOFTWARE, INC. F/K/A  
TRILOGY SOFTWARE, INC.; TRILOGY  
DEVELOPMENT GROUP, INC.;  
AMERIPRISE FINANCIAL, INC.;  
AMERIPRISE FINANCIAL SERVICES, INC.;  
AND AUREA SOFTWARE, INC A/K/A  
AUREA, INC., Defendants.

Case No. 13-cv-05160 SI

AMERIPRISE ANSWER

For its Answer to the Amended Complaint (Doc. No. 48) filed by Plaintiff XimpleWare Corporation (“XimpleWare”) on December 17, 2013, Defendants Ameriprise Financial, Inc. and Ameriprise Financial Services, Inc., (“Ameriprise”) answers as follows:

**GENERAL DENIAL**

Unless specifically admitted below, Defendant denies each and every allegation in the Complaint.

**NATURE OF ACTION**

1  
2 1. Ameriprise admits that the Complaint alleges claims of copyright infringement  
3 arising under 17 U.S.C. § 501 et seq., breach of contract, violation of Lanham Act Section 43(a),  
4 breach of implied covenant of good faith and fair dealing, unjust enrichment, intentional interference  
5 with prospective economic advantage, unfair competition under California Business and Professions  
6 Code §17200 et seq., alter ego liability, and declaratory relief, but, to the extent that such allegations  
7 are directed at Ameriprise Financial, Inc. or Ameriprise Financial Services, Inc. (collectively,  
8 “Ameriprise”), Ameriprise denies that any such infringement or other wrongful action has transpired  
9 and denies that Plaintiff is entitled to any relief.

**PARTIES**

10  
11 2. Ameriprise lacks sufficient knowledge or information to form a belief about the truth  
12 of the allegations in Paragraph No. 2 of Plaintiff’s Complaint, and therefore denies all allegations  
13 contained therein.

14 3. Ameriprise lacks sufficient knowledge or information to form a belief about the truth  
15 of the allegations in Paragraph No. 3 of Plaintiff’s Complaint, and therefore denies all allegations  
16 contained therein.

17 4. Ameriprise lacks sufficient knowledge or information to form a belief about the truth  
18 of the allegations in Paragraph No. 4 of Plaintiff’s Complaint, and therefore denies all allegations  
19 contained therein.

20 5. Ameriprise lacks sufficient knowledge or information to form a belief about the truth  
21 of the allegations in Paragraph No. 5 of Plaintiff’s Complaint, and therefore denies all allegations  
22 contained therein.

23 6. Ameriprise lacks sufficient knowledge or information to form a belief about the truth  
24 of the allegations in Paragraph No. 6 of Plaintiff’s Complaint, and therefore denies all allegations  
25 contained therein.

26 7. Ameriprise admits that Ameriprise Financial, Inc. is a corporation registered to do  
27 business in California, organized under the laws of Delaware, with its principle place of business  
28

1 located in Minneapolis, Minnesota. Ameriprise admits it is a financial services provider and that it  
2 uses a product provided by Versata software. Unless specifically admitted, Ameriprise denies the  
3 remaining allegations in Paragraph No. 7 of Plaintiff's Complaint.

4 8. Ameriprise admits that Ameriprise Financial Services, Inc. is a corporation registered  
5 to do business in California, organized under the laws of Delaware, with its principle place of  
6 business located in Minneapolis, Minnesota. Ameriprise admits that Ameriprise Financial Services,  
7 Inc. is a subsidiary of Ameriprise Financial, Inc. Unless specifically admitted, Ameriprise denies the  
8 remaining allegations in Paragraph No. 8 of Plaintiff's Complaint.

9 9. Ameriprise lacks sufficient knowledge or information to form a belief about the truth  
10 of the allegations in Paragraph No. 9 of Plaintiff's Complaint, and therefore denies all allegations  
11 contained therein.

12 10. Ameriprise lacks sufficient knowledge or information to form a belief about the truth  
13 of the allegations in Paragraph No. 10 of Plaintiff's Complaint, and therefore denies all allegations  
14 contained therein.

15 11. Ameriprise lacks sufficient knowledge or information to form a belief about the truth  
16 of the allegations in Paragraph No. 11 of Plaintiff's Complaint, and therefore denies all allegations  
17 contained therein.

18 12. Plaintiff's assertion is a legal conclusion that does not require a response by  
19 Ameriprise. To the extent there are any factual allegations in Paragraph 12, Ameriprise lacks  
20 sufficient knowledge or information to form a belief about the truth of the allegations in Paragraph  
21 No. 12 of Plaintiff's Complaint, and therefore denies all allegations contained therein.

### 22 **JURISDICTION AND VENUE**

23 13. Ameriprise admits that this is a civil action for purported copyright infringement  
24 claims, and that this court may have subject matter jurisdiction over certain copyright claims under  
25 28 U.S.C. §§ 1331 and 1338(a), but Ameriprise lacks sufficient knowledge or information to admit or  
26 deny that subject matter jurisdiction exists over this case and therefore denies the same. Ameriprise  
27  
28

denies the remaining allegations in Paragraph No. 13 of Plaintiff's Complaint, and therefore denies all allegations contained therein.

14. Plaintiff's assertion that this Court has personal jurisdiction over all defendants is a legal conclusion. To the extent there are any factual allegations in Paragraph No. 14, Ameriprise denies all allegations contained therein.

15. Ameriprise denies that venue is proper in this District. Ameriprise denies all remaining allegations in Paragraph No. 15 of Plaintiff's Complaint.

### **BACKGROUND FACTS**

#### **XML PARSING**

16. Ameriprise lacks sufficient knowledge or information to form a belief about the truth of the allegations in Paragraph No. 16 of Plaintiff's Complaint, and therefore denies all allegations contained therein.

17. Ameriprise lacks sufficient knowledge or information to form a belief about the truth of the allegations in Paragraph No. 17 of Plaintiff's Complaint, and therefore denies all allegations contained therein.

18. Ameriprise lacks sufficient knowledge or information to form a belief about the truth of the allegations in Paragraph No. 18 of Plaintiff's Complaint, and therefore denies all allegations contained therein.

#### **FORMATION OF XIMPLEWARE**

19. Ameriprise lacks sufficient knowledge or information to form a belief about the truth of the allegations in Paragraph No. 19 of Plaintiff's Complaint, and therefore denies all allegations contained therein.

20. Ameriprise lacks sufficient knowledge or information to form a belief about the truth of the allegations in Paragraph No. 20 of Plaintiff's Complaint, and therefore denies all allegations contained therein.

21. Ameriprise lacks sufficient knowledge or information to form a belief about the truth of the allegations in Paragraph No. 21 of Plaintiff's Complaint, and therefore denies all allegations contained therein.

22. Ameriprise lacks sufficient knowledge or information to form a belief about the truth of the allegations in Paragraph No. 22 of Plaintiff's Complaint, and therefore denies all allegations contained therein.

#### **OPEN SOURCE SOFTWARE**

23. Ameriprise lacks sufficient knowledge or information to form a belief about the truth of the allegations in Paragraph No. 23 of Plaintiff's Complaint, and therefore denies all allegations contained therein.

24. Ameriprise lacks sufficient knowledge or information to form a belief about the truth of the allegations in Paragraph No. 24 of Plaintiff's Complaint, and therefore denies all allegations contained therein.

25. Ameriprise lacks sufficient knowledge or information to form a belief about the truth of the allegations in Paragraph No. 25 of Plaintiff's Complaint, and therefore denies all allegations contained therein.

26. Ameriprise admits that a copy of the GPL appears to be attached as Exhibit 1. Ameriprise lacks sufficient knowledge or information to form a belief about the truth of the remaining allegations in Paragraph No. 26 of Plaintiff's Complaint, and therefore denies all allegations contained therein.

27. The requirements of the GPL are a legal conclusion and do not require a response by Ameriprise. To the extent the allegations of Paragraph No. 27 require a response, Ameriprise lacks sufficient knowledge or information to form a belief about the truth of the allegations in Paragraph No. 27 of Plaintiff's Complaint, and therefore denies all allegations contained therein.

28. Ameriprise admits that the GPL includes a preamble. The remaining allegations are a legal conclusion and do not require a response by Ameriprise. To the extent the allegations of Paragraph No. 28 require a response, Ameriprise lacks sufficient knowledge or information to form a

1 belief about the truth of the allegations in Paragraph No. 28 of Plaintiff's Complaint, and therefore  
2 denies all allegations contained therein.

3 29. Ameriprise lacks sufficient knowledge or information to form a belief about the truth  
4 of the allegations in Paragraph No. 29 of Plaintiff's Complaint, and therefore denies all allegations  
5 contained therein.

6 30. Ameriprise lacks sufficient knowledge or information to form a belief about the truth  
7 of the allegations in Paragraph No. 30 of Plaintiff's Complaint, and therefore denies all allegations  
8 contained therein.

9 31. The requirements of the GPL are a legal conclusion and do not require a response by  
10 Ameriprise. To the extent the allegations of Paragraph No. 31 require a response, Ameriprise lacks  
11 sufficient knowledge or information to form a belief about the truth of the allegations in Paragraph  
12 No. 31 of Plaintiff's Complaint, and therefore denies all allegations contained therein.

13 32. The requirements of the GPL are a legal conclusion and do not require a response by  
14 Ameriprise. To the extent the allegations of Paragraph No. 32 require a response, Ameriprise lacks  
15 sufficient knowledge or information to form a belief about the truth of the allegations in Paragraph  
16 No. 32 of Plaintiff's Complaint, and therefore denies all allegations contained therein.

### 17 **THE XIMPLEWARE PRODUCT**

18 33. Ameriprise lacks sufficient knowledge or information to form a belief about the truth  
19 of the allegations in Paragraph No. 33 of Plaintiff's Complaint, and therefore denies all allegations  
20 contained therein.

21 34. Ameriprise lacks sufficient knowledge or information to form a belief about the truth  
22 of the allegations in Paragraph No. 34 of Plaintiff's Complaint, and therefore denies all allegations  
23 contained therein.

24 35. Ameriprise lacks sufficient knowledge or information to form a belief about the truth  
25 of the allegations in Paragraph No. 35 of Plaintiff's Complaint, and therefore denies all allegations  
26 contained therein.

1           36. Ameriprise lacks sufficient knowledge or information to form a belief about the truth  
2 of the allegations in Paragraph No. 36 of Plaintiff's Complaint, and therefore denies all allegations  
3 contained therein.

4           37. Ameriprise lacks sufficient knowledge or information to form a belief about the truth  
5 of the allegations in Paragraph No. 37 of Plaintiff's Complaint, and therefore denies all allegations  
6 contained therein.

7           38. Ameriprise lacks sufficient knowledge or information to form a belief about the truth  
8 of the allegations in Paragraph No. 38 of Plaintiff's Complaint, and therefore denies all allegations  
9 contained therein.

10                                   **THE XIMPLEWARE SOURCE CODE**

11           39. Ameriprise lacks sufficient knowledge or information to form a belief about the truth  
12 of the allegations in Paragraph No. 39 of Plaintiff's Complaint, and therefore denies all allegations  
13 contained therein.

14           40. Ameriprise lacks sufficient knowledge or information to form a belief about the truth  
15 of the allegations in Paragraph No. 40 of Plaintiff's Complaint, and therefore denies all allegations  
16 contained therein.

17           41. Ameriprise lacks sufficient knowledge or information to form a belief about the truth  
18 of the allegations in Paragraph No. 41 of Plaintiff's Complaint, and therefore denies all allegations  
19 contained therein.

20           42. Ameriprise lacks sufficient knowledge or information to form a belief about the truth  
21 of the allegations in Paragraph No. 42 of Plaintiff's Complaint, and therefore denies all allegations  
22 contained therein.

23           43. Ameriprise lacks sufficient knowledge or information to form a belief about the truth  
24 of the allegations in Paragraph No. 43 of Plaintiff's Complaint, and therefore denies all allegations  
25 contained therein.

**THE XIMPLEWARE REGISTERED COPYRIGHTS**

44. Ameriprise lacks sufficient knowledge or information to form a belief about the truth of the allegations in Paragraph No. 44 of Plaintiff's Complaint, and therefore denies all allegations contained therein.

45. Ameriprise admits that exhibit 2 appears to be U.S. Copyright Registration No. TX 7-727-556 dated September 4, 2013. Ameriprise lacks sufficient knowledge or information to form a belief about the truth of the remaining allegations in Paragraph No. 45 of Plaintiff's Complaint, and therefore denies all allegations contained therein.

46. Ameriprise lacks sufficient knowledge or information to form a belief about the truth of the allegations in Paragraph No. 46 of Plaintiff's Complaint, and therefore denies all allegations contained therein.

47. Ameriprise lacks sufficient knowledge or information to form a belief about the truth of the allegations in Paragraph No. 47 of Plaintiff's Complaint, and therefore denies all allegations contained therein.

48. Ameriprise lacks sufficient knowledge or information to form a belief about the truth of the allegations in Paragraph No. 48 of Plaintiff's Complaint, and therefore denies all allegations contained therein.

**DEFENDANTS MISAPPROPRIATED XIMPLEWARE'S SOURCE CODE**

49. Ameriprise lacks sufficient knowledge or information to form a belief about the truth of the allegations in Paragraph No. 49 of Plaintiff's Complaint, and therefore denies all allegations contained therein.

50. The documents filed in the Texas Litigation speak for themselves. Ameriprise denies the allegations set forth in Paragraph 50 of Plaintiff's Complaint.

51. Ameriprise denies the allegations in Paragraph No. 51 of Plaintiff's Complaint.

52. Ameriprise admits that it received DCM from Versata and that it did not receive a XimpleWare copyright notice or other notice about the use of XimpleWare in DCM from Versata. Ameriprise lacks sufficient knowledge or information to form a belief about the truth of the



1 remaining allegations in Paragraph No. 52 of Plaintiff's Complaint, and therefore denies all  
2 allegations contained therein.

3 53. Ameriprise admits that in the Texas litigation Versata asserted that an Oracle version  
4 of the GPL applied to XimpleWare's code. Ameriprise admits that it did not receive XimpleWare  
5 copyright notices or other notice about the use of XimpleWare in DCM from Versata. Ameriprise  
6 lacks sufficient knowledge or information to form a belief about the truth of the remaining  
7 allegations in Paragraph No. 53 of Plaintiff's Complaint, and therefore denies the remaining  
8 allegations contained therein.

9 54. Ameriprise lacks sufficient knowledge or information to form a belief about the truth  
10 of the allegations in Paragraph No. 54 of Plaintiff's Complaint, and therefore denies all allegations  
11 contained therein.

12 55. Ameriprise denies the allegations in Paragraph No. 55 of Plaintiff's Complaint as  
13 they pertain to Ameriprise. Ameriprise lacks sufficient knowledge or information to form a belief  
14 about the truth of the remaining allegations in Paragraph No. 55 of Plaintiff's Complaint, and  
15 therefore denies the remaining allegations contained therein.

16 56. The documents filed in the Texas Litigation speak for themselves. Ameriprise denies  
17 any allegations which are inconsistent with the documents. Ameriprise lacks sufficient knowledge  
18 or information to form a belief about the truth of the remaining allegations in Paragraph No. 56 of  
19 Plaintiff's Complaint, and therefore denies all allegations contained therein.

20 57. To the extent any of the allegations of Paragraph No. 57 pertain to Ameriprise,  
21 Ameriprise denies the allegations. Ameriprise lacks sufficient knowledge or information to form a  
22 belief about the truth of the remaining allegations in Paragraph No. 57 of Plaintiff's Complaint, and  
23 therefore denies all allegations contained therein.

24 58. Ameriprise lacks sufficient knowledge or information to form a belief about the truth  
25 of the allegations in Paragraph No. 58 of Plaintiff's Complaint, and therefore denies all allegations  
26 contained therein.

59. Ameriprise admits that a majority of Ameriprise financial advisors are not direct employees of Ameriprise. Ameriprise's 2012 Annual Report speaks for itself. Ameriprise denies the remaining allegations in Paragraph No. 59 of Plaintiff's Complaint.

60. Ameriprise's 2012 Annual Report speaks for itself. Ameriprise denies the allegations in Paragraph No. 60 of Plaintiff's Complaint.

61. Ameriprise denies the allegations in Paragraph No. 61 of Plaintiff's Complaint.

62. Ameriprise denies the allegations in Paragraph No. 62 of Plaintiff's Complaint.

63. Ameriprise denies the allegations in Paragraph No. 63 of Plaintiff's Complaint.

64. Ameriprise lacks sufficient knowledge or information to form a belief about the truth of the allegations in Paragraph No. 64 of Plaintiff's Complaint, and therefore denies all allegations contained therein.

## **FIRST CLAIM FOR RELIEF**

### **DIRECT COPYRIGHT INFRINGEMENT**

65. Ameriprise incorporates its denials of paragraphs 1-64 of Plaintiff's Complaint.

66. Ameriprise lacks sufficient knowledge or information to form a belief about the truth of the allegations in Paragraph No. 66 of Plaintiff's Complaint, and therefore denies all allegations contained therein.

67. Ameriprise lacks sufficient knowledge or information to form a belief about the truth of the allegations in Paragraph No. 67 of Plaintiff's Complaint, and therefore denies all allegations contained therein.

68. Plaintiff's assertion that its copyright is valid and fully enforceable is a legal conclusion. To the extent there are any factual allegations in Paragraph No. 68, Ameriprise denies all allegations contained therein.

69. Plaintiff's assertion is a legal conclusion. Ameriprise lacks sufficient knowledge or information to form a belief about the truth of any factual allegations in Paragraph No. 69 of Plaintiff's Complaint, and therefore denies all allegations contained therein.

1           70. Ameriprise lacks sufficient knowledge or information to form a belief about the truth  
2 of the allegations in Paragraph No. 70 of Plaintiff's Complaint, and therefore denies all allegations  
3 contained therein.

4           71. Ameriprise denies the allegations in Paragraph No. 71 of Plaintiff's Complaint.

5           72. Ameriprise denies the allegations in Paragraph No. 72 of Plaintiff's Complaint.

6           73. Ameriprise denies the allegations in Paragraph No. 73 of Plaintiff's Complaint to the  
7 extent they pertain to Ameriprise. Ameriprise lacks sufficient knowledge or information to form a  
8 belief about the truth of the remaining allegations in Paragraph No. 73 of Plaintiff's Complaint, and  
9 therefore denies the remaining allegations contained therein.

10          74. Ameriprise denies the allegations in Paragraph No. 74 of Plaintiff's Complaint to the  
11 extent they pertain to Ameriprise. Ameriprise lacks sufficient knowledge or information to form a  
12 belief about the truth of the remaining allegations in Paragraph No. 74 of Plaintiff's Complaint, and  
13 therefore denies the remaining allegations contained therein.

14          75. Ameriprise denies the allegations in Paragraph No. 75 of Plaintiff's Complaint to the  
15 extent they pertain to Ameriprise. Ameriprise lacks sufficient knowledge or information to form a  
16 belief about the truth of the remaining allegations in Paragraph No. 75 of Plaintiff's Complaint, and  
17 therefore denies the remaining allegations contained therein.

18          76. Ameriprise denies the allegations in Paragraph No. 76 of Plaintiff's Complaint to the  
19 extent they pertain to Ameriprise. Ameriprise lacks sufficient knowledge or information to form a  
20 belief about the truth of the remaining allegations in Paragraph No. 76 of Plaintiff's Complaint, and  
21 therefore denies the remaining allegations contained therein.

22          77. Ameriprise denies the allegations in Paragraph No. 77 of Plaintiff's Complaint to the  
23 extent they pertain to Ameriprise. Ameriprise lacks sufficient knowledge or information to form a  
24 belief about the truth of the remaining allegations in Paragraph No. 77 of Plaintiff's Complaint, and  
25 therefore denies the remaining allegations contained therein.  
26  
27  
28

**SECOND CLAIM FOR RELIEF**

**CONTRIBUTORY COPYRIGHT INFRINGEMENT**

78-89. Plaintiff does not assert this claim against Ameriprise, so it need not respond to the legal conclusions and factual allegations in paragraphs 78-89. To the extent any of the allegations require a response from Ameriprise, Ameriprise lacks sufficient knowledge or information to form a belief about the truth of any allegations in Paragraphs No. 78-89 of Plaintiff's Complaint, and therefore denies all allegations contained therein.

**THIRD CLAIM FOR RELIEF**

**VIOLATION OF LANHAM ACT §43(A)**

90-99. Plaintiff does not assert this claim against Ameriprise, so it need not respond to the legal conclusions and factual allegations in paragraphs 90-99. To the extent any of the allegations require a response from Ameriprise, Ameriprise lacks sufficient knowledge or information to form a belief about the truth of any allegations in Paragraphs No. 90-99 of Plaintiff's Complaint, and therefore denies all allegations contained therein.

**FOURTH CLAIM FOR RELIEF**

**BREACH OF CONTRACT**

100-110. Plaintiff does not assert this claim against Ameriprise, so it need not respond to the legal conclusions and factual allegations in paragraphs 100-110. To the extent any of the allegations require a response from Ameriprise, Ameriprise lacks sufficient knowledge or information to form a belief about the truth of any allegations in Paragraphs No. 100-110 of Plaintiff's Complaint, and therefore denies all allegations contained therein.

**FIFTH CLAIM FOR RELIEF**

**BREACH OF THE IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING**

111-118. Plaintiff does not assert this claim against Ameriprise, so it need not respond to the legal conclusions and factual allegations in paragraphs 111-118. To the extent any of the allegations require a response from Ameriprise, Ameriprise lacks sufficient knowledge or

information to form a belief about the truth of any allegations in Paragraphs No. 111-118 of Plaintiff's Complaint, and therefore denies all allegations contained therein.

## **SIXTH CLAIM FOR RELIEF**

### **UNJUST ENRICHMENT**

119. Ameriprise incorporates its denials of paragraphs 1-118 of Plaintiff's Complaint.

120. Ameriprise denies that it committed any wrongful acts or any acts unjustly enriched it by allowing it to avoid the time and cost of developing software or source code capable of XML parsing at the level that XimpleWare's Source Code achieves. Ameriprise lacks sufficient knowledge or information to form a belief about the truth of any remaining allegations in Paragraph No. 120 of Plaintiff's Complaint, and therefore denies all allegations contained therein. Ameriprise denies the allegations of paragraph 120 of Plaintiff's Complaint.

121. Ameriprise denies that it committed any wrongful acts or any acts unjustly enriched it by allowing it to benefit from the advantages XimpleWare's Source Code. Ameriprise lacks sufficient knowledge or information to form a belief about the truth of any remaining allegations in Paragraph No. 121 of Plaintiff's Complaint, and therefore denies all allegations contained therein. Ameriprise denies the allegations of paragraph 121 of Plaintiff's Complaint.

122. Ameriprise lacks sufficient knowledge or information to form a belief about the truth of any remaining allegations in Paragraph No. 122 of Plaintiff's Complaint, and therefore denies all allegations contained therein. Ameriprise denies the allegations of paragraph 122 of Plaintiff's Complaint.

123. Ameriprise denies the allegations in Paragraph No. 123 of Plaintiff's Complaint.

## **SEVENTH CLAIM FOR RELIEF**

### **INTENTIONAL INTERFERENCE WITH PROSPECTIVE ECONOMIC ADVANTAGE**

124-131. Plaintiff does not assert this claim against Ameriprise, so it need not respond to the legal conclusions and factual allegations in paragraphs 124-131. To the extent any of the allegations require a response from Ameriprise, Ameriprise lacks sufficient knowledge or

information to form a belief about the truth of any allegations in Paragraphs No. 124-131 of Plaintiff's Complaint, and therefore denies all allegations contained therein.

## **EIGHTH CLAIM FOR RELIEF**

### **UNFAIR COMPETITION**

132. Ameriprise incorporates its denials of paragraphs 1-131 of Plaintiff's Complaint.

133. Ameriprise lacks sufficient knowledge or information to form a belief about the truth of any allegations in Paragraphs No. 133 of Plaintiff's Complaint, and therefore denies all allegations contained therein.

134. Ameriprise lacks sufficient knowledge or information to form a belief about the truth of any allegations in Paragraphs No. 134 of Plaintiff's Complaint, and therefore denies all allegations contained therein.

135. Ameriprise lacks sufficient knowledge or information to form a belief about the truth of any allegations in Paragraphs No. 135 of Plaintiff's Complaint, and therefore denies all allegations contained therein.

136. Ameriprise lacks sufficient knowledge or information to form a belief about the truth of any allegations in Paragraphs No. 136 of Plaintiff's Complaint, and therefore denies all allegations contained therein.

137. Ameriprise admits that Versata supplied DCM to Ameriprise and that it continues to use DCM. Whether certain sections of the DCM were protected by the GPL and belong to XimpleWare are legal conclusions which do not require a response. Ameriprise denies the remaining allegations of Paragraph No. 137 of Plaintiff's Complaint.

138. Paragraph No. 138 of Plaintiff's Complaint purports to state a legal conclusion. To the extent that any of the allegations in Paragraph No. 138 require a response, Ameriprise denies all remaining allegations contained therein.

139. Ameriprise denies the allegations of Paragraph No. 139 of Plaintiff's Complaint to the extent they are directed at Ameriprise. Ameriprise lacks sufficient knowledge or information to

form a belief about the truth of the remaining allegations in Paragraph No. 139 of Plaintiff's Complaint, and therefore denies the remaining allegations contained therein.

140. Ameriprise denies the allegations of Paragraph No. 140 of Plaintiff's Complaint to the extent they are directed at Ameriprise. Ameriprise lacks sufficient knowledge or information to form a belief about the truth of the remaining allegations in Paragraph No. 140 of Plaintiff's Complaint, and therefore denies the remaining allegations contained therein.

#### **NINTH CLAIM FOR DECLARATORY RELIEF**

141. Ameriprise incorporates its denials of paragraphs 1-140 of Plaintiff's Complaint.

142. Ameriprise lacks sufficient knowledge or information to form a belief about the truth of any allegations in Paragraphs No. 142 of Plaintiff's Complaint, and therefore denies all allegations contained therein.

143. Ameriprise denies the allegations of Paragraph No. 143 of Plaintiff's Complaint.

144. Ameriprise lacks sufficient knowledge or information to form a belief about the truth of any allegations in Paragraphs No. 144 of Plaintiff's Complaint, and therefore denies all allegations contained therein.

145. Ameriprise denies the allegations of Paragraph No. 145 of Plaintiff's Complaint.

146. Ameriprise denies the allegations of Paragraph No. 146 of Plaintiff's Complaint.

147. Ameriprise denies the allegations of Paragraph No. 147 of Plaintiff's Complaint.

#### **RESPONSE TO PRAYER FOR RELIEF**

To the extent a response is required, Ameriprise denies that Plaintiff is entitled to any of the relief requested in the Complaint.

#### **RESPONSE TO DEMAND FOR JURY TRIAL**

Ameriprise respectfully demands a trial by jury on all issues so triable.

#### **AFFIRMATIVE DEFENSES**

##### **FIRST DEFENSE**

##### **ESTOPPEL**

The claims alleged in the Complaint are barred, in whole or part, by the doctrine of estoppel.

**SECOND DEFENSE**

**UNCLEAN HANDS**

The claims alleged in the Complaint are barred, in whole or part, by the doctrine of unclean hands.

**THIRD DEFENSE**

**NO ENTITLEMENT TO INJUNCTIVE RELIEF**

Plaintiff is not entitled to an injunctive relief because any harm to Plaintiff is not irreparable and Plaintiff has an adequate remedy at law.

**FOURTH DEFENSE**

**FAILURE TO STATE A CLAIM**

The Plaintiff has failed to state a claim upon which relief can be granted.

**FIFTH DEFENSE**

**COPYRIGHT PREEMPTION**

The non-copyright claims alleged in the Complaint are preempted, in whole or part, by federal copyright law.

**SIXTH DEFENSE**

**LICENSE**

The claims alleged in the Complaint are barred, in whole or part, by Ameriprise's valid license to use the software at issue.

**SEVENTH DEFENSE**

**WAIVER**

The claims alleged in the Complaint are barred, in whole or part, by the doctrine of waiver.

**EIGHTH DEFENSE**

**INDEMNITY**

The claims alleged in the Complaint against Ameriprise are barred, in whole or part, because Ameriprise is indemnified.



**NINTH DEFENSE**

**ACQUIESCENCE**

The claims alleged in the Complaint are barred, in whole or part, because Plaintiff has acquiesced to the conduct at issue.

**TENTH DEFENSE**

**COPYRIGHT MISUSE**

The claims alleged in the Complaint are barred, in whole or part, because Plaintiff has misused its copyright.

**ELEVENTH DEFENSE**

**HARM CAUSED BY OTHERS/THIRD-PARTY LIABLE**

The claims alleged in the Complaint are barred, in whole or part, because any harm was not caused by Ameriprise and a third-party is liable.

**TWELFTH DEFENSE**

**LACHES**

The claims alleged in the Complaint are barred, in whole or part, due to laches.

**RESERVATION OF DEFENSES**

To the extent not already pled, Ameriprise reserves its right to add additional defenses pending further investigation and discovery.

Respectfully submitted February 18, 2014.

/s/ Case Collard

Gregory S. Tamkin

Case Collard

DORSEY & WHITNEY, LLP

Email: tamkin.greg@dorsey.com

Email: collard.case@dorsey.com

1400 Wewatta Street, Suite 400

Denver, CO 80202-5549

Telephone:(303) 629-3400

Facsimile: (303) 629-3450

***Attorneys for Defendants Ameriprise Financial, Inc.  
and Ameriprise Financial Services, Inc.***

CERTIFICATE OF SERVICE

On February 18, 2014, I caused the foregoing document, titled AMERIPRISE ANSWER, electronically filed with the court, which will cause a Notice of Electronic Filing to be automatically generated by the court's electronic filing system and sent to all parties in this case. Pursuant to General Order No. 45, Sections II.G. and IX, the Notice of Electronic Filing when e-mailed to the email addresses of record for counsel in the case constitutes service on the receiving parties.

/s/ Case Collard

Case Collard